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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,094	09/11/2003	George S. Reppas	4447-000013	5931

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EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,094

Applicant(s)

REPPAS ET AL

Examiner

Sunil Singh

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 5-11, 14-17, 21-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman '276 in view of George (US 4283811) or Berry et al. (US 3591247) or Japanese document (53-32258).

Sherman discloses a convertible furniture assembly comprising: a frame assembly (see Figs. 5,10); an upper platform (38) pivotally (40) coupled to said frame assembly for supporting a bedding component, said upper platform being moveable between a raised position and a lowered position (see Figs. 5,10), and a counterbalance member (42, 56, see col. 8 line 60+, see Fig. 7) coupled to said upper platform, said counterbalance member being raised between a first position and a second position in response to said upper platform moving from said raised position to said lowered position. A lower platform (64), a hinge (66, see col. 5 line 1, line 50, col. 6 line 20+) connecting the lower platform to the upper platform. A biasing spring member (58, col. 2 line 23+, col. 4 line 31+, col. 5 line 56+, col. 8 line 60+). Sherman discloses the invention substantially as claimed. However, Sherman is silent about using an L-shaped hinge. George, Berry et al. and Japanese document '258 all teach an L-shaped hinge (see Figs. 2, 8 and 2 respectively). It would have been considered obvious to one of ordinary skill in the art

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to modify Sherman by substituting the L-shaped hinge as taught by either George or Berry et al. or Japanese document '258 for the hinge (66, see Sherman col. 6) disclosed by Sherman since it is a design choice to substitute equivalent parts for performing equivalent functions.

3. Claims 12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman in view of Reppas or Drexhage or Reppas et al. (US 4318195, 4597568, 5621930).

Sherman discloses the invention substantially as claimed. However, Sherman lacks a torsion system. Reppas, Drexhage and Reppas et al. all teach torsion systems (52,54; 10; 20). It would have been considered obvious to one of ordinary skill in the art to modify Sherman by substituting the torsion spring means as taught by either Reppas or Drexhage or Reppas et al. for the spring means as disclosed by Sherman since such a modification aids in the uprighting of the bed to it's stored position. It is a design choice to substitute one spring for another.

4. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman in view of either George or Berry et al. or Japanese document (53-32258) as applied to claim 5, above, and further in view of Jones (US 6212710).

Sherman (once modified) discloses the invention substantially as claimed. However, the (once modified) Sherman lacks a frame that is cabinet. Jones teaches a cabinet frame (see Figs. 1-4). It would have been considered obvious to one of ordinary skill in

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the art to further modify the (once modified) Sherman by having his frame as a cabinet as taught by Jones since such a modification provides adequate storage as well as enhance the aesthetic appearance.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman in view of Jones (US 6212710)

Sherman discloses the invention substantially as claimed. However, Sherman lacks a frame that is cabinet. Jones teaches a cabinet frame (see Figs. 1-4). It would have been considered obvious to one of ordinary skill in the art to modify Sherman by having his frame as a cabinet as taught by Jones since such a modification provides adequate storage as well as enhance the aesthetic appearance.

6. Claims 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman in view of either George or Berry et al. or Japanese document (53-32258) as applied to claim 35 above, and further in view of Reppas or Drexhage or Reppas et al.

Sherman (once modified) discloses the invention substantially as claimed. However, the (once modified) Sherman lacks a torsion system. Reppas, Drexhage and Reppas et al. all teach torsion systems (52,54; 10; 20). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Sherman by substituting the torsion spring means as taught by either Reppas or Drexhage or Reppas et al. for the spring means as disclosed by Sherman. since such a modification

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aids in the uprighting of the bed to it's stored position. It is a design choice to substitute one spring for another.

Response to Arguments

7. Applicant's arguments with respect to claims 12 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge generally available allows one of ordinary skill in the art to substitute one type of hinge (namely, hinge depicted as member 66, see col. 6 line 20+ of the Sherman reference) for another type of hinge as taught by either George or Berry et al. or Japanese document '258 (see Figs. 2, 8 and 2 respectively).

Applicant argues that the cited references fail to teach hinge members that allow for offset axis. This is not concurred with because George, Berry et al. and Japanese document '258 all teach an L-shaped hinge (see Figs. 2, 8 and 2 respectively) which allows for the upper platform to be offset from the lower platform and as further depicted in Figure 5 of Sherman it is shown that the upper platform is offset from the lower platform.

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Applicant argues that the cited references fail to teach that the spacing between the upper and lower platforms allow sufficient space to accommodate items. This is not concurred with because as depicted in Figure 5 of Sherman the spacing between the upper and lower platforms allow sufficient space to accommodate items.

Applicant argues that the cited references fail to teach a self-standing support pivotally coupled between the frame assembly and said lower platform, said upper platform being pivotally coupled with said lower platform in a parallelogram linkage. This is not concurred with because Sherman teaches a self-standing support (68,70) pivotally (72,76) coupled between the frame assembly and said lower platform, said upper platform being pivotally (66) coupled with said lower platform in a parallelogram linkage (see Fig. 4, col. 7 line 25).

Applicant argues that the cited references fail to teach that the lower platform is a table. The examiner is perplexed by such a statement because Sherman explicitly states that the lower platform 64 is a table (see col. 4 line 65+).

Applicant argues that the cited references fail to teach that the upper platform is a bed frame. The examiner is perplexed by such a statement because Sherman explicitly states that the upper platform is a bed frame (see col. 4 line 45+).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday 8:30 AM - 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



SS


2/18/05